

191—48.5(508E) Disclosures.

48.5(1) With each application for a viatical settlement contract, a viatical settlement provider or viatical settlement broker shall provide the viator with at least the following disclosures no later than the time the application for the viatical settlement contract is signed by the viator and the viatical settlement broker. The disclosures shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker, and shall provide the following information:

a. There are possible alternatives to a viatical settlement contract including any accelerated death benefits or policy loans offered under the prospective viator's life insurance policy;

b. Some or all of the proceeds of the viatical settlement contract may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax adviser;

c. Proceeds of the viatical settlement contract could be subject to the claims of creditors;

d. Receipt of the proceeds of a viatical settlement contract may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies;

e. The viator has the right to rescind a viatical settlement contract for 15 calendar days after the receipt of the viatical settlement proceeds by the viator, as provided in subrule 48.9(10), and, if the insured dies during the rescission period, the settlement contract shall be deemed to have been rescinded, subject to repayment of all viatical settlement proceeds and any premiums, loans and loan interest to the viatical settlement provider or viatical settlement purchaser;

f. Funds will be sent to the viator within three business days after the viatical settlement provider has received the insurer's or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated;

g. Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator, and assistance should be sought from a financial adviser;

h. When entering into a viatical settlement contract, having a recent physical exam is in the viator's best interest, since an accurate life expectancy can only be predicted based on current medical records;

i. Disclosure to a viator and insured shall include distribution of the NAIC's most current form of brochure describing the process of viatical or life settlements, or such other form approved by the commissioner;

j. The disclosure document shall contain the following language: "All medical, financial or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other, may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase."; and

k. The insured may be contacted by either the viatical settlement provider or viatical settlement broker or its authorized representative for the purpose of determining the insured's health status. This contact is limited to once per year if the insured has a life expectancy of more than two years, once every three months if the insured has a life expectancy of more than one year but less than two years, and no more than once per month if the insured has a life expectancy of one year or less.

48.5(2) A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and the viatical settlement provider or viatical settlement broker, and provide the following information:

a. The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated;

b. The name, address and telephone number of the viatical settlement provider;

c. The amount and method of calculating the broker's compensation, including anything of value paid or given to a viatical settlement broker for the placement of a policy;

d. If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with the viator's insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement;

e. The dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate and, if known, the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the viatical settlement provider's interest in those benefits; and

f. The name, business address, and telephone number of the independent third-party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

48.5(3) If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy, the viatical settlement provider shall communicate the change in ownership or beneficiary to the insured in writing by certified mail within 20 days after the change.

48.5(4) If the viatical settlement provider is an issuer of securities under Iowa Code chapter 502, the disclosure document shall meet the requirements of rule 191—50.122(502).

48.5(5) If the viator is not the insured, then these disclosures must be affirmatively made to the insured, as well as the viator, and written consent to the viatication must be received from both parties.